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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/599,477	09/29/2006	Sven-Eric Lunner	OUTO 3528	9561
7812 7590 04/16/2009 SMITH-HILL AND BEDELL, P.C. 16100 NW CORNELL ROAD, SUITE 220 BEAVERTON, OR 97006				
EXAMINER VELASQUEZ, VANESSA T				
ART UNIT		PAPER NUMBER		
1793				
MAIL DATE		DELIVERY MODE		
04/16/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action**  
**Before the Filing of an Appeal Brief**

**Application No.**

10/599,477

**Applicant(s)**

LUNNER ET AL.

**Examiner**

Vanessa Velasquez

**Art Unit**

1793

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 06 April 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 15, 17-20, 29 and 30.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Roy King/  
Supervisory Patent Examiner, Art Unit 1793

/Vanessa Velasquez/  
Examiner, Art Unit 1793

Continuation of 11, does NOT place the application in condition for allowance because:

The claims remain rejected on the same grounds set forth in the final Office action dated January 15, 2009.

Regarding amended claim 15, the claim is amended to incorporate all the features of dependent claim 16, which is now canceled. The claim remains obvious over Eklund in view of Lintz for at least the following reasons: Eklund does not teach calcining and sintering the fluoride-containing hydroxide sludge fluxing agent. However, Lintz teaches that fluorspar ( $\text{CaF}_2$ ) fluxing agents are heated to temperatures below their melting point (i.e., calcined) to dehydrate and strengthen them (col. 2, lines 14-22). Therefore, it would have been obvious to one of ordinary skill in the art to calcine the hydroxide sludge of Eklund by heating the sludge in the manner taught by Lintz because such a heat treatment removes moisture and enhances the mechanical strength of the flux. Lintz further teaches that the fluorspar flux is sintered at about 1200°C or greater (col. 4, lines 4-7), which overlaps the claimed temperature range. The overlap between a range disclosed in the prior art and the claimed range is sufficient to establish a prima facie case of obviousness (MPEP § 2144.05 "Overlap of Ranges").

Regarding amended claim 17, the claim was amended to reformat the wording of step (c). The amendment did not result in any change in substance or scope of the claim, and may therefore be rejected on the same grounds set forth in the final Office action.

It is acknowledged that claims 31 and 32 have been canceled.

Applicant's remarks filed April 6, 2009 have been considered, but are found unpersuasive.

Applicant asserts that the sludge product of Eklund is not a fluxing agent because it does not behave like one. Applicant states that fluxes lower the melting point of slag in order to facilitate the removal of the slag and other impurities. The Applicant further argues that combining Lintz with Eklund is improper because Eklund does not teach flux or fluorspar, while Lintz does. In response, the Examiner kindly directs attention to page 5 (line 19) of Eklund, wherein it is taught that the hydroxide sludge for recycling into a steel melt contains  $\text{CaF}_2$  (i.e., fluorspar). Lintz teaches that fluorspar is used as a flux for the refining of steel. Therefore, upon consideration of Eklund and Lintz, one of ordinary skill in the smelting arts would conclude that the sludge of Eklund would expect to function as a fluxing agent because of its inclusion of fluxing agent fluorspar.